

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 56, “Fining and Citations,” Iowa Administrative Code.

Item 1 makes a technical correction to rule 481—56.7(135C) by correcting a reference to the Director of the Department of Inspections and Appeals.

Item 2 rescinds current rule 481—56.10(135C), Factors determining imposition of citation and fine, and adopts a new rule on the same subject. The new rule clarifies the process by which fines imposed against health care facilities for violations of state rules are calculated. The rule also provides a clear and transparent method for calculating the amount of a state fine for a Class I violation and provides related explanations for the calculations.

The amendment in Item 2 is the result of a kaizen event held by the Department during which the calculation of state fines was reviewed and discussed. Included among the kaizen participants was a representative from a long-term care association. One of the most commonly heard complaints from long-term care providers is the lack of transparency in the calculation of state fines, especially those associated with Class I violations. As a result of the kaizen, a chart was developed that will clearly indicate how fines associated with Class I violations are calculated.

Prior to publication of the Notice of Intended Action, a draft of the amendments was shared with providers for comment. Notice of Intended Action was published in the Iowa Administrative Bulletin on August 2, 2017, as **ARC 3222C**. Comments were received from LeadingAge Iowa, which feels that the calculation table contained in the rules will lead to larger fines. Additionally, the association believes there should be some method to reduce fines based on mitigating factors.

While the Department acknowledges the association’s concerns, it does not believe the use of a table to calculate fines will automatically lead to an increase in the amount of fines. The amount of a state fine that can be imposed is limited by statutory language, and the table is designed simply to provide transparency in how a state fine is calculated. Additionally, the table does provide a space for “additional circumstances surrounding the violation” where mitigating factors could be listed and considered.

One adjustment to the rules, however, has been made by the Department since the publication of the Notice of Intended Action. A change has been made to Item 2 to clarify that the maximum state fine for a Class I violation may be impacted by provisions contained in Iowa Code sections 135C.44 and 135C.44A.

Iowa Code section 135C.44 provides that any fine issued by the Department for a Class I or Class II violation shall be trebled for a second or subsequent Class I or Class II violation occurring within any 12-month period if a citation was issued previously and a state fine was imposed. Likewise, Iowa Code section 135C.44A provides that the fine for a Class I violation shall be doubled when the violation is due to an intentional act by the facility in violation of Iowa Code chapter 135C or a rule promulgated thereunder by the Department.

The Department does not believe that the amendments will pose any financial hardship on any regulated entity or individual.

The State Board of Health initially reviewed the proposed amendments at its July 12, 2017, meeting, and subsequently approved them at its September 13, 2017, meeting.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

These amendments shall become effective November 15, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 481—56.7(135C) as follows:

481—56.7(135C) Notation of classes of violations. All rules relating to health care facilities, other than those which are informational in character, shall be followed by a notation at the end of each rule, or

pertinent part thereof. This notation shall consist of a Roman numeral or numerals in parentheses. These Roman numerals refer to the class (either class I, class II, or class III) of violation which may be cited by the ~~commissioner~~ director of the department of inspections and appeals when that rule, or a part of a that rule carrying the notation is violated by the facility.

ITEM 2. Rescind rule 481—56.10(135C) and adopt the following **new** rule in lieu thereof:

481—56.10(135C) Factors determining imposition of citation and fine.

56.10(1) The director of the department of inspections and appeals may consider evidence of the circumstances surrounding the violation including, but not limited to, those factors set out in rule 481—56.9(135C) when:

- a.* Determining whether a violation will be subject to a fine or citation; and
- b.* Determining the monetary amount of the penalty to be specified in the citation, when such a fine is authorized to be levied for a particular class of violation.

56.10(2) If it is determined that a violation shall be cited as a class I violation, the following chart shall be used by the department when calculating the fine amount. The amount of the fine shall be the sum total of the calculated fine amounts for each factor to be considered. With the exception of fines trebled pursuant to Iowa Code section 135C.44 or doubled pursuant to Iowa Code section 135C.44A, the total fine imposed for a single class I violation shall not be less than \$2,000 nor more than \$10,000.

Class I Fine Calculation

Factors to Be Considered	Associated Fine and Related Explanation	Calculated Fine
Frequency and length of time the violation occurred, as specified in subrule 56.9(1)	Duration of violation: <ul style="list-style-type: none"> • If 30 days or less, add \$250. • If more than 30 days, add \$500. Breadth of violation: <ul style="list-style-type: none"> • One resident impacted, add \$250. • More than one resident impacted, add \$500. 	\$
Past history of the facility, as specified in subrule 56.9(2)	Same violation of rule or related rule cited within the past 24 months, add \$500.	\$
Culpability of the facility, as specified in subrule 56.9(3)	Degree of culpability of facility as it relates to the reason the violation occurred, add \$0 to \$500. ¹	\$
Extent of any harm to a resident, as specified in subrule 56.9(4)	<ul style="list-style-type: none"> • Death, imminent danger or substantial probability of death, add \$6,000 to \$8,500. • Moderate to severe physical harm, imminent danger or substantial probability of moderate to severe physical harm, add \$3,000 to \$7,500. • Minor to moderate physical harm, imminent danger or substantial probability of minor to moderate physical harm, add \$1,000 to \$3,000. 	\$
Relationship of the violation to any other types of violations, as specified in subrule 56.9(5)	<ul style="list-style-type: none"> • One or more related class II or class III violations cited, add \$250. • One or more related class I violations cited, add \$500.² 	\$

Actions of the facility after the occurrence of the violation, as specified in subrule 56.9(6)	<ul style="list-style-type: none"> • Good-faith corrective actions taken although violation not appropriately corrected, add \$250. • Corrective actions not taken or the facility failed to notify the director as required, add \$500. 	\$
Accuracy and extent of records kept by the facility, as specified in subrule 56.9(7)	Records maintained by the facility contain pertinent inaccuracies or omissions or were unavailable to the department, add \$500.	\$
Rights of the residents to make informed decisions, as specified in subrule 56.9(8)	Residents' rights to make informed decisions were not respected, add \$500.	\$
Whether the facility made a good-faith effort to address a high-risk resident's needs, as specified in subrule 56.9(9)	Evidence indicates the facility did not make a good-faith effort to address a high-risk resident's specific needs, add \$500.	\$
Additional circumstances surrounding the violation, as specified in rule 481—56.9(135C)	Cite any additional circumstances considered and any associated fine amount.	\$
Total Calculated Class I Fine Amount		\$

¹ For example, the culpability of a facility may range from acts or omissions that are inadvertent or negligent to acts or omissions that intentionally disregard known or obvious risks and make it highly probable that the outcome would cause harm to a resident.

² For example, a violation related to pressure sores could be correlated to a violation related to the use of restraints or failure to provide incontinent care.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/11/17.